

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANN EUGENE KEEN,

Defendant-Appellant.

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UNPUBLISHED

May 16, 1997

No. 182472

Genesee Circuit Court

LC No. 88-39079 FC

Before: Corrigan, C.J., and Young and M.J. Talbot\*, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of two counts of kidnapping and one count of first degree criminal sexual conduct, and originally sentenced to 100 to 200 years imprisonment on each count. Defendant and his confederate, Daniel Pacheco, kidnapped two girls, ages 11 and 12, who were on their way to school, took them to a mobile home, and sexually assaulted them over the ensuing five hours. The victims were then taken to a location near their school and abandoned.

Those convictions were affirmed on prior appeal, *People v Keen*, 446 Mich 866; 522 NW2d 334, but the case returns after a remand (Docket No. 178058) for resentencing. On remand, defendant was sentenced to 10 to 25 years imprisonment on each of the kidnapping charges and to life imprisonment for criminal sexual conduct. Defendant claims that his life sentence is disproportionate under the rule of *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Any comparison of defendant's paroleable life sentence for first degree criminal sexual conduct to alternative possibilities involving terms of years is ultimately fruitless. The use of statistics to evaluate the actual potential for parole has been ruled improper in *People v Carson*, 220 Mich App 662, 677; \_\_\_ NW2d \_\_\_ (1996) (Special Panel per Administrative Order 1994-6). A life sentence for first degree criminal sexual conduct is within the sentence guidelines, and defendant has failed to overcome the presumption that a sentence within the guideline range is proportionate to the offense and the offender. *People v Eberhardt*, 205 Mich App 587; 518 NW2d 511 (1994). Whatever mitigating

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\* Circuit judge, sitting on the Court of Appeals by assignment.

factors, such as defendant's prior criminal record and non-leadership role in the offense, might be cited are overwhelmed by the depraved and grievous nature of the crimes committed. The trial court did not abuse its sentencing discretion in concluding that a life sentence is appropriate on this record.

Affirmed.

/s/ Maura D. Corrigan

/s/ Robert P. Young, Jr.

/s/ Michael J. Talbot